

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#26

Applicant: David A. Connolly

Title: WIRELESS DIGITAL PERSONAL COMMUNICATIONS SYSTEM HAVING
VOICE/DATA/IMAGE TWO-WAY CALLING AND INTERCELL HAND-OFF
PROVIDED THROUGH DISTRIBUTED LOGIC RESIDENT IN PORTABLE
HANDSET TERMINALS, FIXED TERMINALS, RADIO CELL BASE STATIONS
AND SWITCHED TELEPHONE NETWORK

App. No.: 08/926,187

Filed: Sept. 8, 1997

Examiner: Nessler, Cynthia

Group Art Unit: 2744

FAX RECEIVED

Customer No.: 60533

Confirmation No.: unknown

APR 01 2010

Atty. Dkt. No.: A00215 Con 2

MS: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENT TO PETITION TO REVIVE ABANDONED APPLICATION

Dear Sir:

This is a supplement to the Petition to Revive Abandoned Application filed May 21, 2009 ("the Petition") for the above referenced Application ("the Application").

A telephone interview was conducted between Ms. Cynthia Nessler of the USPTO Office of Patent Legal Administration and Mr. Jason Moore, attorney for the Assignee. During the interview, Ms. Nessler requested supplemental information to support the Petition. The following information and Exhibit are provided to satisfy the request. Due to the time that has elapsed and the difficulty in determining which documents in the available files are legitimate and which have been falsified, exact dates for certain events can not be readily determined.

Date Applicant (Assignee) became aware that the Application was Abandoned

The file records of Brinks Hofer Gilson and Lione include a letter dated October 15, 1999 from Mr. Prendergast to Bruce Stuckman, in-house attorney for the Assignee. In the letter, Mr.

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Prendergast acknowledges Mr. Stuckman's instructions to pay the issue fee. Thus, based on this letter, the Assignee appears to have been aware of the Notice of Allowance and Issue Fee due on or before October 15, 1999. (See Exhibit 1 of Petition filed May 21, 2009, "Letter Acknowledging Instructions to pay Issue Fee").

The file records of Brinks Hofer Gilson and Lione include a letter from Mr. Prendergast to Mr. Stuckman related to a petition to revive the application dated January 25, 2003. (See Supplemental Exhibit 1 filed herewith).

The email records of Brinks Hofer Gilson and Lione include an email from Joseph Hetz, a supervising shareholder at Brinks Hofer Gilson and Lione, indicating that Mr. Hetz had provided an update to a representative of the Assignee regarding Mr. Prendergast's attempts to revive the Application. The email is dated October 31, 2005. Accordingly, the Assignee may have been aware that the application was abandoned on or before October 31, 2005. (See Exhibit 8 of Petition filed May 21, 2009, "Selection of Redacted Electronic Mail Referencing Communications between Mr. Prendergast and USPTO", p. 3012 last paragraph). Additionally, the Assignee appears to have been given information indicating that Mr. Prendergast was continuing to pursue revival of the Application.

On September 16, 2008, Brinks Hofer Gilson and Lione sent a letter to Mr. Umesh Desai, in-house attorney for the Assignee, providing initial information about Brinks Hofer Gilson and Lione's investigation of Mr. Prendergast's activities. The letter refers to the Notice of Abandonment mailed on May 24, 2000. Accordingly, the Assignee was aware that the application was abandoned on or about September 16, 2008. Additionally, the Assignee received initial information regarding Mr. Prendergast's apparent falsification of documents on or about September 16, 2008.

Reason for Delay from the Date the Assignee became aware that the Application was
Abandoned until the filing of the Petition

The entire delay from when the Assignee became aware of the abandonment of the Application until the filing of the Petition (filed May 21, 2009) was unavoidable and reasonable due to:

1) Mr. Prendergast's apparent falsification of documents and other communications to hide the facts and status of the Application from the Assignee. For example, significant time was required for Brinks Hofer Gilson and Lione's internal investigation to be completed and provided to the Assignee.

2) The complexity of determining the true status of the Application from available records. For example, a significant amount of time was required to investigate which documents in the available records were true and which had been falsified.

3) The complexity of preparing the Petition in light of the circumstances. For example, time was required for Assignee's new representative to review Brinks Hofer Gilson and Lione's investigation results, to gather information about Brinks Hofer Gilson and Lione's internal procedures (e.g., Brinks Hofer Gilson and Lione's docketing procedures), and to research case law pertinent to the unusual facts in this matter.

UNAVOIDABLE DELAY

Based on the above recited facts and arguments and the facts and arguments presented in the Petition, Applicant submits that the entire delay in paying the issue fee from the due date of the issue fee until the filing of a grantable petition pursuant to 37 CFR §1.137(a) was unavoidable. The evidence presented demonstrates that the Application was unavoidably abandoned. Additionally, the evidence demonstrates that the Applicant has been diligent since becoming aware that the Application was abandoned and has used due care and diligence to petition the Office to revive the Application. Accordingly, Applicant hereby requests that the Application be revived as unavoidably abandoned.

UNINTENTIONAL DELAY

In the alternative, the evidence presented further demonstrates that the Application was abandoned unintentionally. Applicant has been diligent since becoming aware that the Application was abandoned and has used due care and diligence to petition the Office to revive the Application. Accordingly, Applicant hereby requests that the Application be revived as unintentionally abandoned.

CONCLUSION

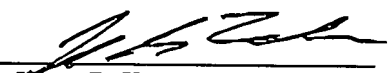
Applicant respectfully requests revival of the Application under 37 CFR §1.137(a) as unavoidably abandoned. In the alternative, if the request for revival of the Application under 37 C.F.R. §1.137(a) is denied, Applicant respectfully requests revival of the Application pursuant to 37 CFR §1.137(b) as unintentionally abandoned.

If a call would in any way facilitate revival of this Application, the Office is invited to contact the current Attorney of Record.

Applicant does not believe that any additional fees are due, but if the Commissioner believes additional fees are due, the Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

3-31-2010
Date


Jeffrey G. Toler, Reg. No. 38,342
Attorney for Applicant
TOLER LAW GROUP
8500 Bluffstone Cove, Suite A201
Austin, Texas 78759
(512) 327-5515(phone)
(512) 327-5575 (fax)

SUPPLEMENTAL EXHIBIT 1

William F. Prendergast
312-321-4242
EMAIL: WFP@brinkshofer.com

BRINKS
HOFFER
GILSON
& LIONE

January 25, 2003

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APR 01 2010

VIA First Class Mail

Bruce Stuckman, Ph.D.
SBC Properties, L.P..
6500 River Place Blvd.
Bld. III, 1st Floor
Austin, TX 78730-1111

A PROFESSIONAL CORPORATION
INTELLECTUAL PROPERTY ATTORNEYS

NBC TOWER - SUITE 3600
455 N. CITYFRONT PLAZA DRIVE
CHICAGO, ILLINOIS 60611-5599
brinkshofer.com
Fax 312-321-4299
TELEPHONE 312-321-4200

SAN JOSE, CA
INDIANAPOLIS, IN
ANN ARBOR, MI
ARLINGTON, VA

RE: U.S. Patent Application Entitled:
WIRELESS DIGITAL PERSONAL COMMUNICATIONS
SYSTEM HAVING VOICE/DATA/IMAGE TWO-WAY CALLING
AND INTERCELL HAND-OFF PROVIDED THROUGH
DISTRIBUTED LOGIC RESIDENT IN PORTABLE HANDSET
TERMINALS, FIXED TERMINALS, RADIO CELL BASE
STATIONS AND SWITCHED TELEPHONE NETWORK
Our File No. 8285/153

Dear Bruce:

Please find attached a copy of the documents you requested. I have spoken with Examiner about this matter and faxed in the lost documents for a second time. The Examiner advises that we expect a response shortly. I am currently looking into the question of amending any pending foreign applications. I will advise as soon as I have a response from our foreign associates. I apologize for the delay. Please let me know if you have any questions.

Sincerely,



William F. Prendergast

WFP